

See Attachment

(11)  
7/26/01  
JSM

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

RICHARD WOJTCZAK,  
Plaintiff

v.

PENNSYLVANIA DEPARTMENT  
OF CORRECTIONS, et al.,  
Defendants

CIVIL ACTION NO. 1:CV-01-1163  
(Judge Rambo)  
(Magistrate Judge Mannion)

FILED  
HARRISBURG, PA

JUL 25 2001

ORDER

MARY E. D'ANDREA, CLERK  
Per JSM  
Deputy Clerk

Before the court is a July 9, 2001, report of the magistrate judge recommending that the captioned action be dismissed for Plaintiff's failure to exhaust administrative remedies. Plaintiff has filed objections to the report.

Plaintiff argues that while his civil rights action is filed under 42 U.S.C. § 1983, his action is being brought under the Americans with Disabilities Act -Rehabilitation Act ("ADA") and, therefore, he does not have to exhaust administrative remedies.

Pursuant to Board of Trustees of the University of Alabama v. Garrett, \_\_\_, U.S. \_\_\_, 121 S. Ct. 955 (2001), Plaintiff cannot assert an ADA claim against Commonwealth defendants. The United States Supreme Court held that the ADA does not abrogate a states' Eleventh Amendment immunity from suits for money damages under Title I of that act. Id. at 967.

Certified from the record  
Date 7/25/01  
Mary E. D'Andrea, Clerk  
Per JSM  
Deputy Clerk

Accordingly, **IT IS HEREBY ORDERED THAT:**

- 1) The court adopts the report and recommendation of Magistrate Judge Mannion, to the extent the complaint is deemed to be filed pursuant to 42 U.S.C. § 1983, for failure to exhaust administrative remedies.
- 2) To the extent the complaint is brought pursuant to the ADA, 42 U.S.C. § 12101, the complaint is dismissed for failure to state a cause of action against the Commonwealth Defendants.
- 3) Plaintiff's objection to the order of the magistrate judge denying his motion for appointment of counsel is deemed moot in light of the dismissal of this action.
- 4) Any appeal from this order will be deemed frivolous and not taken in good faith.
- 5) The Clerk of Court shall close the file.

  
SYLVIA H. RAMBO  
United States District Judge

Dated: July 25, 2001.

UNITED STATES DISTRICT COURT  
FOR THE  
MIDDLE DISTRICT OF PENNSYLVANIA

\* \* MAILING CERTIFICATE OF CLERK \* \*

July 25, 2001

Re: 1:01-cv-01163 Wojtczak v. PA Dept of Corr.

True and correct copies of the attached were mailed by the clerk  
to the following:

Richard Wojtczak  
SCI-Huntingdon  
AF5977  
1100 Pike Street  
Huntingdon, PA 16654-1112

cc:

Judge

Magistrate Judge

U.S. Marshal

Probation

U.S. Attorney

Atty. for Deft.

Defendant

Warden

Bureau of Prisons

Ct Reporter

Ctroom Deputy

Orig-Security

Federal Public Defender

Summons Issued

Standard Order 93-5

Order to Show Cause

Bankruptcy Court

Other \_\_\_\_\_

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( ) Pro Se Law Clerk

( ) INS

( ) Jury Clerk

with N/C attached to complt. and served by:

U.S. Marshal ( ) Pltf's Attorney ( )

with Petition attached & mailed certified mail

to: US Atty Gen ( ) PA Atty Gen ( )

DA of County ( ) Respondents ( )

MARY E. D'ANDREA, Clerk

DATE:

7/25/01

BY:

Wsm  
Deputy Clerk